

**INTERNATIONAL LAW AND COMPLIANCE:
THEORIES AND PRACTICE**

PROFESSOR JUTTA BRUNNÉE

Spring 2002

University of Toronto

Faculty of Law

Storage

**KZ
1242.5
.B78
2002
c.1**

**These materials are reproduced solely for the use of students in the Faculty of
Law, University of Toronto**

**INTERNATIONAL LAW AND COMPLIANCE:
THEORIES AND PRACTICE**


PROFESSOR JUTTA BRUNNÉE

Spring 2002

University of Toronto

Faculty of Law

**These materials are reproduced solely for the use of students in the Faculty of
Law, University of Toronto**



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

INTERNATIONAL LAW AND COMPLIANCE: THEORIES AND PRACTICE

Professor Jutta Brunnée

TABLE OF CONTENTS

I. INTERNATIONAL LAW THEORIES

L. Henkin, <i>How Nations Behave</i> , 2nd ed. (1979) at 13-27.....	1
---	---

Positivism:

R. Ago, "Positivism" in Rudolf Bernhardt, ed., <i>Encyclopedia of Public International Law</i> , vol. 7 (1984) at 385-393.....	9
--	---

H.L.A. Hart, "International Law" Chapter 10 in <i>The Concept of Law</i> , 2nd ed. (1994) at 213-237.....	14
---	----

A.A. D'Amato, "The Neo-Positivist Conception of International Law" (1965) 59 A.J.I.L. 321-324.....	27
--	----

B. Simma & A.L. Paulus, "The Responsibility of Individuals for Human Rights Abuses in Internal Conflict: A Positivist View" (1999) 93 A.J.I.L. 302-308.....	29
---	----

Legal Process – Policy Orientation

M.S. McDougal & H.D. Lasswell, "The Identification and Appraisal of Diverse Systems of Public Order" (1959) 53 A.J.I.L. 1.....	33
--	----

R. Higgins, "The Nature and Function of International Law" Chapter 1, in <i>Problems and Process: International Law and How We Use it</i> (1994) at 1-16.....	48
---	----

Liberal Theory

A.M. Slaughter, "A Liberal Theory of International Law" in <i>Proceedings of the American Society of International Law</i> , April 2000, at 240-249.....	57
--	----

T.M. Franck, "Legitimacy in the International System" (1988) 82 A.J.I.L. 705-759.....	67
---	----

Critical Theory

- M. Koskenniemi, "The Politics of International Law" (1990) 1 *European J. Int'l L.* 4-32.....86

II. INTERNATIONAL RELATIONS THEORIES

- S.M. Walt, "International Relations: One World, Many Theories" *Foreign Policy* 29-44 (Spring 1998).....100

Realism

- D. Acheson, "Remarks," *Proceedings of the American Society of International Law*, 1963, 1-15 [reprinted in R.J. Beck *et al.*, *International Rules* 107-108 (1996)].....108

Rationalism – Institutionalism

- S.D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables" (1982) 36 *Int'l Organization*109
- R.O. Keohane, "International Institutions: Two Approaches" (1988) 32 *Int'l Studies Quarterly* 379-396 (1988).....121

Constructivism

- A. Wendt, "Collective Identity Formation and the International State" (1994) 88 *Am. Pol. Sci. Rev.* 384.....136
- T. Dunne, "The Social Construction of International Society" (1995) 1 *European J. Int'l Relations* 367.....147
- M. Finnemore & K. Sikkink, "International Norm Dynamics and Political Change" (1998) 52 *Int'l Organization* 887.....158

III. INTERNATIONAL LAW & INTERNATIONAL RELATIONS: SITUATING COMPLIANCE IN THE NEW DIALOGUE

- A.M. Slaughter, A.S. Tulumello & S. Wood, "International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship" (1998) 92 *A.J.I.L.* 367-393.....174
- R.O. Keohane, "International Relations and International Law: Two Optics" (1997) 38 *Harvard Int'l L. J.* 487.....205
- K.W. Abbott *et al.*, "The Concept of Legalization" (2000) 54 *Int'l Organization* 401-419.....214

J. Brunnée & S.J. Toope, "International Law and Constructivism: Elements of an Interactional Theory of International Law" (2000) 39 Columbia J. Transnational L. 1-36.....224

IV. THEORIES ON COMPLIANCE

A. Chayes & A. Handler Chayes, "On Compliance" (1993) 47 Int'l Organization 175-205.....230

G.W. Downs, D.M. Roake, & P.N. Barsoom, "Is the Good News about Compliance Good News about Cooperation?" (1996) 50 Int'l Organization 379.....246

G.W. Downs, K.W. Danish & P.N. Barsoom, "The Transformational Model of International Regime Design: Triumph of Hope or Experience?" (2000) 38 Columbia J. Transnational L. 465.....257

Harold Hongju Koh, "Why Do Nations Obey International Law?", Book Review of *The New Sovereignty: Compliance with International Regulatory Agreements* by A. Chayes & A. Handler Chayes, and of *Fairness in International Law and Institutions* by T.M. Franck, (1997) 106 Yale L. J. 2599.....279

transnational process that for Jutta should be + legal proc.

A.M. Slaughter, "The Real New World Order" (1997) 76 Foreign Affairs 183.....298

J.T. Checkel, "Why Comply? Constructivism, Social Norms and the Study of International Institutions" ARENA Working Papers WP 99/24.....306

B. Kingsbury, "The Concept of Compliance as a Function of Competing Conceptions of International Law" (1998) 19 Mich. J. Int'l L. 345-372.....334

V. TYPES OF LEGAL NORMS – 'HARD' AND 'SOFT'?

D. Bodansky, "Customary (and Not So Customary) International Law" 3 Indiana J. Global Leg. Stud. 105-119.....349

M. Finnemore, "Are Legal Norms Distinctive" (2000) 32 N.Y.U. J. Int'l L. & Pol. 699.....355

K.W. Abbott & D. Snidal, "Hard and Soft Law in International Governance" (2000) 54 Int'l Organization 421-456.....359

VI. CASE STUDIES

States, the UN Security Council, and the Prohibition of the Use of Force

United Nations Charter, 26 June 1945, Can. T.S. 1945 No. 7, Preamble, Arts. 1-2, 23-27, 39-42, 51.....378

United Nations Security Council, Resolutions 1368, U.N. Doc. S/RES/1368 (2001) & Resolution 1373, U.N. Doc. S/RES/1373 (2001).....	383
United Nations Security Council, Letter from the Permanent Representative of the United States of America to the United Nations addressed the President of the Security Council, U.N. Doc. S/2001/946 (2001).....	387
US Congress, Joint Resolution to authorize the use of force, Public Law 107-40-Sept. 18, 2001, 115 STAT. 224.....	388

Lawmaking & Compliance Mechanisms under Multilateral Environmental Agreements

<i>Kyoto Protocol to the UN Framework Convention on Climate Change</i> 10 December 1997, 37 I.L.M. 649, Arts. 3, 5-7, 12, 17, 18.....	389
<i>Procedures and mechanisms on compliance under the Kyoto Protocol</i> , U.N. Doc. FCCC/CP/2001/L.21.....	395
R. Churchill & G. Ulfstein, "Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law," 94 AM. J. INT'L L. 623-625, 626, 636-642, 643-647 (2000).....	410

The Role of National Courts

<i>Baker v. Canada (Minister of Citizenship and Immigration)</i> , [1999] 2 S.C.R. 817 (paras. 50; 66-67; 68-71; 74-75; 78-81).....	423
<i>Spraytech (Société d'arrosage) v. Hudson (Town)</i> , 2001 SCC 40 (summary, paras. 1-3, 17, 30, 31).....	429
K. Knop, "Here and There: International Law in Domestic Courts," 32 N.Y.U.J. Int'l L. & Pol. 501 (2000).....	434